IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9415 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGJIBHAI SHANKARBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR KM SHETH for Petitioner(s) : 1,
MR PR ABICHANDANI ld. AGP for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,
MR GC MAZMUDAR for Respondent(s) : 2,
MR HG MAZMUDAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. PR Abichandani ld. AGP waives service of rule on behalf of respondent no. 1 and Mr. Mazmudar ld.

Advocate waives service of rule on behalf of respondent no. 2. With the consent of the parties,the mater is taken up for final hearing and disposal.

2. We have heard Mr. KM Sheth ld. Advocate for the petitioner, Mr. PR Abichandani ld. AGP for respondent no. 1 and Mr. Mazmudar ld. Advocate for respondent no. 2.

3. It is the say of the petitioner that upon acquisition of his land under the provisions of the Land Acquisition Act for constructing the Narmada Canal in the Bharuch region, award dated 22.1.2001 came to be made. The petitioner was not satisfied with the compensation determined by the Special Land Acquisition Officer, hence, he submitted application to the Collector to make reference under sec. 18 of the Act. It is further stated by the petitioner that later on in respect of trees standings on the said land, additional award dated 13.6.2003 was made. The petitioner was not satisfied with the compensation awarded to him, he, therefore, submitted an application to respondent- Collector under the provisions of sec. 18 with a request to make reference to the District Court. The application is dated 6.8.2003. The same was rejected by respondent- Collector

by order dated 15.9.2004 on the ground that since subsequent award was only with respect to the trees standing on the land in question and it was not by way of supplementary award, reference could not be made against such award. According to him, the petitioner could directly approach the civil court. The petitioner has challenged this order on the ground that it is erroneous and against the provisions of sec. 18 of the Act. Mr. KM Sheth ld. Advocate for the petitioner has submitted that at the time when the main award was passed, the compensation with regard to 39 Barry trees standing on the land was not determined, that was subsequently determined and the compensation was awarded by way of additional award. It was, therefore, incumbent upon respondent- Collector to make reference.

4. Sec. 23 provides for matters to be considered in determining the compensation. Firstly, it states the market value of a land at the date of publication of notification under sec. 4 of the Act, and secondly the damage sustained by the person interested by reason of the taking of any standing crop or trees which may be on the land at the time of the Collector taking possession thereof. Thus, sec. 23 includes trees standing on the

land to be taken into consideration while determining the compensation. At the time of main award, this was left out, but it was determined later on by way of additional award. Sub-sec.(1) of Sec. 18 states that any person interested, who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court. Thus, sec. 18 does not make any distinction between award and the additional award. When such provision of sec. 23 takes into its sweep the trees standing on the land in question also. Hence, award in that repect of trees has to be an award within the meaning of sec. 18 of the Act. If that be so, it is obligatory upon the Collector to make reference if the application otherwise does not suffer from any illegality. In the decision rendered by the Apex Court in the case of Laxmi chand & Ors. vs. Gram Panchayat, Kararia and Ors., reported in AIR 1996 SC 523, it has been held that Civil Court has no jurisdiction to decide the case arising under the Land Acquisition Act. In view of the same, it is not possible for the petitioner to directly approach to the Civil Court for determination of the proper compensation. It has to be routed through the Collector by virtue of sec. 18 of the Act. In view of the same, we are of the opinion that the impugned order dated

15.9.2004 is required to be quashed and it is hereby quashed and set aside.we, however, remit the matter back to the respondent – Collector for his re-consideration and at the time of re-consideration, it will be open for the Collector to examine the application from all angles including that of the limitation. It is hoped that the respondent- Collector will decide the application as expeditiously as possible.

5. This application is, therefore, partly allowed. Rule is made absolute to the aforesaid extent only.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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